

FIRST REGULAR SESSION
[C O R R E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 656
99TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, May 4, 2017, with
recommendation that the Senate Committee Substitute do pass.

1391S.05C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 67.1830, 67.1846, 67.5090, 67.5092, 67.5094, 67.5102, and 67.5104,
RSMo, and to enact in lieu thereof eight new sections relating to wireless
communications infrastructure.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 67.1830, 67.1846, 67.5090, 67.5092, 67.5094, 67.5102,
2 and 67.5104, RSMo, are repealed and eight new sections enacted in lieu thereof,
3 to be known as sections 67.1830, 67.1846, 67.5090, 67.5092, 67.5094, 67.5101,
4 67.5102, and 67.5104, to read as follows:

67.1830. As used in sections 67.1830 to 67.1846, the following terms shall
2 mean:

3 (1) "Abandoned equipment or facilities", any equipment materials,
4 apparatuses, devices or facilities that are:

5 (a) Declared abandoned by the owner of such equipment or facilities;

6 (b) No longer in active use, physically disconnected from a portion of the
7 operating facility or any other facility that is in use or in service, and no longer
8 capable of being used for the same or similar purpose for which the equipment,
9 apparatuses or facilities were installed; or

10 (c) No longer in active use and the owner of such equipment or facilities
11 fails to respond within thirty days to a written notice sent by a political
12 subdivision;

13 (2) "Degradation", the actual or deemed reduction in the useful life of the

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is
intended to be omitted in the law.**

14 public right-of-way resulting from the cutting, excavation or restoration of the
15 public right-of-way;

16 (3) "Emergency", includes but is not limited to the following:

17 (a) An unexpected or unplanned outage, cut, rupture, leak or any other
18 failure of a public utility facility that prevents or significantly jeopardizes the
19 ability of a public utility to provide service to customers;

20 (b) An unexpected or unplanned outage, cut, rupture, leak or any other
21 failure of a public utility facility that results or could result in danger to the
22 public or a material delay or hindrance to the provision of service to the public
23 if the outage, cut, rupture, leak or any other such failure of public utility facilities
24 is not immediately repaired, controlled, stabilized or rectified; or

25 (c) Any occurrence involving a public utility facility that a reasonable
26 person could conclude under the circumstances that immediate and undelayed
27 action by the public utility is necessary and warranted;

28 (4) "Excavation", any act by which earth, asphalt, concrete, sand, gravel,
29 rock or any other material in or on the ground is cut into, dug, uncovered,
30 removed, or otherwise displaced, by means of any tools, equipment or explosives,
31 except that the following shall not be deemed excavation:

32 (a) Any de minimis displacement or movement of ground caused by
33 pedestrian or vehicular traffic;

34 (b) The replacement of utility poles and related equipment at the existing
35 general location that does not involve either a street or sidewalk cut; or

36 (c) Any other activity which does not disturb or displace surface conditions
37 of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on
38 the ground;

39 (5) "Management costs" or "rights-of-way management costs", the actual
40 costs a political subdivision reasonably incurs in managing its public rights-of-
41 way, including such costs, if incurred, as those associated with the following:

42 (a) Issuing, processing and verifying right-of-way permit applications;

43 (b) Inspecting job sites and restoration projects;

44 (c) Protecting or moving public utility right-of-way user construction
45 equipment after reasonable notification to the public utility right-of-way user
46 during public right-of-way work;

47 (d) Determining the adequacy of public right-of-way restoration;

48 (e) Restoring work inadequately performed after providing notice and the
49 opportunity to correct the work; and

50 (f) Revoking right-of-way permits.

51 Right-of-way management costs shall be the same for all entities doing similar
52 work. Management costs or rights-of-way management costs shall not include
53 payment by a public utility right-of-way user for the use or rent of the public
54 right-of-way, degradation of the public right-of-way or any costs as outlined in
55 paragraphs (a) to (f) of this subdivision which are incurred by the political
56 subdivision as a result of use by users other than public utilities, the attorneys'
57 fees and cost of litigation relating to the interpretation of this section or section
58 67.1832, or litigation, interpretation or development of any ordinance enacted
59 pursuant to this section or section 67.1832, or attorneys' fees and costs in
60 connection with issuing, processing, or verifying right-of-way permits or other
61 applications or agreements, or the political subdivision's fees and costs related to
62 appeals taken pursuant to section 67.1838. In granting or renewing a franchise
63 for a cable television system, a political subdivision may impose a franchise fee
64 and other terms and conditions permitted by federal law;

65 (6) "Managing the public right-of-way", the actions a political subdivision
66 takes, through reasonable exercise of its police powers, to impose rights, duties
67 and obligations on all users of the right-of-way, including the political
68 subdivision, in a reasonable, competitively neutral and nondiscriminatory and
69 uniform manner, reflecting the distinct engineering, construction, operation,
70 maintenance and public work and safety requirements applicable to the various
71 users of the public right-of-way, provided that such rights, duties and obligations
72 shall not conflict with any federal law or regulation. In managing the public
73 right-of-way, a political subdivision may:

74 (a) Require construction performance bonds or insurance coverage or
75 demonstration of self-insurance at the option of the political subdivision or if the
76 public utility right-of-way user has twenty-five million dollars in net assets and
77 does not have a history of permitting noncompliance **[within] in** the political
78 subdivision as defined by the political subdivision, then the public utility right-of-
79 way user shall not be required to provide such bonds or insurance;

80 (b) Establish coordination and timing requirements that do not impose a
81 barrier to entry;

82 (c) Require public utility right-of-way users to submit, for right-of-way
83 projects commenced after August 28, 2001, requiring excavation within the public
84 right-of-way, whether initiated by a political subdivision or any public utility
85 right-of-way user, project data in the form maintained by the user and in a

86 reasonable time after receipt of the request based on the amount of data
87 requested;

88 (d) Establish right-of-way permitting requirements for street excavation;

89 (e) Establish removal requirements for abandoned equipment or facilities,
90 if the existence of such facilities prevents or significantly impairs right-of-way
91 use, repair, excavation or construction;

92 (f) Establish permitting requirements for towers and other structures or
93 equipment for wireless communications facilities in the public right-of-way,
94 [notwithstanding] **under** the provisions of section 67.1832, **which permitting**
95 **requirements shall also be consistent with sections 67.5090 to 67.5104;**

96 (g) Establish standards for street restoration in order to lessen the impact
97 of degradation to the public right-of-way; and

98 (h) Impose permit conditions to protect public safety;

99 (7) "Political subdivision", a city, town, village, county of the first
100 classification or county of the second classification;

101 (8) "Public right-of-way", the area on, below or above a public roadway,
102 highway, street or alleyway in which the political subdivision has an ownership
103 interest, but not including:

104 (a) The airwaves above a public right-of-way with regard to cellular or
105 other nonwire telecommunications or broadcast service;

106 (b) Easements obtained by utilities or private easements in platted
107 subdivisions or tracts;

108 (c) Railroad rights-of-way and ground utilized or acquired for railroad
109 facilities; or

110 (d) Poles, pipes, cables, conduits, wires, optical cables, or other means of
111 transmission, collection or exchange of communications, information, substances,
112 data, or electronic or electrical current or impulses utilized by a municipally
113 owned or operated utility pursuant to chapter 91 or pursuant to a charter form
114 of government;

115 (9) "Public utility", every cable television service provider, every pipeline
116 corporation, gas corporation, electrical corporation, rural electric cooperative,
117 telecommunications company, water corporation, heating or refrigerating
118 corporation or sewer corporation under the jurisdiction of the public service
119 commission; every municipally owned or operated utility pursuant to chapter 91
120 or pursuant to a charter form of government or cooperatively owned or operated
121 utility pursuant to chapter 394; every street light maintenance district; every

122 privately owned utility; and every other entity, regardless of its form of
123 organization or governance, whether for profit or not, which in providing a public
124 utility type of service for members of the general public, utilizes pipes, cables,
125 conduits, wires, optical cables, or other means of transmission, collection or
126 exchange of communications, information, substances, data, or electronic or
127 electrical current or impulses, in the collection, exchange or dissemination of its
128 product or services through the public rights-of-way;

129 (10) "Public utility right-of-way user", a public utility owning or
130 controlling a facility in the public right-of-way; and

131 (11) "Right-of-way permit", a permit issued by a political subdivision
132 authorizing the performance of excavation work in a public right-of-way.

67.1846. 1. Nothing in sections 67.1830 to 67.1846 relieves the political
2 subdivision of any obligations under an existing franchise agreement in effect on
3 May 1, 2001. Nothing in sections 67.1830 to 67.1846 will apply to that portion
4 of any ordinance passed prior to May 1, 2001, which establishes a street
5 degradation fee. Nothing in sections 67.1830 to 67.1846 shall be construed as
6 limiting the authority of county highway engineers or relieving public utility
7 right-of-way users from any obligations set forth in chapters 229 to 231. Nothing
8 in sections 67.1830 to 67.1846 shall be deemed to relieve a public utility right-of-
9 way user of the provisions of an existing franchise, franchise fees, license or other
10 agreement or permit in effect on May 1, 2001. Nothing in sections 67.1830 to
11 67.1846 shall prohibit a political subdivision or public utility right-of-way user
12 from renewing or entering into a new or existing franchise, as long as all other
13 public utility right-of-way users have use of the public right-of-way on a
14 nondiscriminatory basis. Nothing in sections 67.1830 to 67.1846 shall prevent a
15 grandfathered political subdivision from enacting new ordinances, including
16 amendments of existing ordinances, charging a public utility right-of-way user a
17 fair and reasonable linear foot or antenna fee or from enforcing or renewing
18 existing linear foot ordinances for use of the right-of-way, provided that the public
19 utility right-of-way user either:

20 (1) Is entitled under the ordinance to a credit for any amounts paid as
21 business license taxes or gross receipts taxes; or

22 (2) Is not required by the political subdivision to pay the linear foot fee
23 **or antenna fee** if the public utility right-of-way user is paying gross receipts
24 taxes, **business license fees, or business license taxes that are not**
25 **nominal and that are imposed specifically on communications-related**

26 revenue, services, or equipment.

27 For purposes of this section, a "grandfathered political subdivision" is any
28 political subdivision which has, prior to May 1, 2001, enacted one or more
29 ordinances reflecting a policy of imposing any linear foot fees on any public utility
30 right-of-way user, including ordinances which were specific to particular public
31 right-of-way users. Any existing ordinance or new ordinance passed by a
32 grandfathered political subdivision providing for payment of the greater of a
33 linear foot fee or a gross receipts [fee] **tax** shall be enforceable only with respect
34 to the linear foot fee.

35 2. Nothing in sections 67.1830 to 67.1846 shall prohibit a political
36 subdivision from enacting, renewing or enforcing provisions of an ordinance to
37 require a business license tax, sales tax, occupation tax, franchise tax or franchise
38 fee, property tax or other similar tax, to the extent consistent with federal
39 law. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision
40 from enacting, enforcing or renewing provisions of an ordinance to require a gross
41 receipts tax pursuant to chapter 66, chapter 92, or chapter 94. For purposes of
42 this subsection, the term "franchise fee" shall mean "franchise tax".

67.5090. Sections 67.5090 to 67.5103 shall be known and may be cited as
2 the "Uniform Wireless Communications Infrastructure Deployment Act" and is
3 intended to encourage and streamline the deployment of broadcast and broadband
4 facilities and to help ensure that robust wireless radio-based communication
5 services are available throughout Missouri **by adopting a uniform statewide**
6 **framework for the deployment of wireless infrastructure consistent**
7 **with applicable right-of-way and zoning guidelines. Except as specified**
8 **herein, nothing in this act is intended to prevent or otherwise limit the**
9 **ability of wireless communications service providers and wireless**
10 **communications infrastructure providers to deploy wireless**
11 **infrastructure consistent with this act and sections 67.1830 to 67.1846,**
12 **to prevent or otherwise limit an authority's ability to require wireless**
13 **communications service providers and wireless communications**
14 **infrastructure providers to obtain permits for the installation of**
15 **wireless facilities or wireless support structures, or to prevent a**
16 **municipal utility or municipality from requiring wireless**
17 **communications service providers and wireless communications**
18 **infrastructure providers collocating small wireless facilities on**
19 **municipal or municipal utility poles to comply with section 67.5104.**

67.5092. As used in sections 67.5090 to 67.5103, the following terms

mean:

(1) "Accessory equipment", any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures;

(2) "Antenna", communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services;

(3) "Applicant", any person engaged in the business of providing wireless communications services or the wireless communications infrastructure required for wireless communications services who submits an application;

(4) "Application", a request submitted by an applicant to an authority to construct a new wireless support structure, for the substantial modification of a wireless support structure, or for collocation of a wireless facility or replacement of a wireless facility on an existing structure;

(5) "Authority", each state, county, and municipal governing body, board, agency, office, or commission authorized by law and acting in its capacity to make legislative, quasi-judicial, or administrative decisions relative to zoning or building permit review of an application. The term shall not include state courts having jurisdiction over land use, planning, or zoning decisions made by an authority;

(6) ["Base station", a station at a specific site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics, and includes a structure that currently supports or houses an antenna, a transceiver, coaxial cables, power supplies, or other associated equipment;

(7)] "Building permit", a permit issued by an authority prior to commencement of work on the collocation of wireless facilities on an existing structure, the substantial modification of a wireless support structure, or the commencement of construction of any new wireless support structure, solely to ensure that the work to be performed by the applicant satisfies the applicable building code;

[(8)] (7) "Collocation", the placement or installation of a new wireless facility on [a] **an existing structure, including associated ground mounted**

37 **facilities immediately adjacent to an existing structure**, that already has
38 an existing wireless facility, including electrical transmission towers, water
39 towers, buildings, **utility poles, existing structures**, and other structures
40 capable of structurally supporting the attachment of wireless facilities in
41 compliance with applicable codes;

42 **(8) "Communications facility", the set of equipment and network**
43 **components, including wires and cables and associated facilities used**
44 **by a cable operator, as defined in 47 U.S.C. Section 522(5), a**
45 **telecommunications carrier, as defined in 47 U.S.C. Section 153(51), a**
46 **provider of information service, as defined in 47 U.S.C. Section 153(24),**
47 **or a wireless communications provider, to provide communications**
48 **services hereby defined to include cable service, as defined in 47 U.S.C.**
49 **Section 522(6), telecommunications service, as defined in 47 U.S.C.**
50 **Section 153(53), an information service, as defined in 47 U.S.C. Section**
51 **153(24), wireless communications service, or other one-way or two-way**
52 **communications service;**

53 **(9) "Electrical transmission tower", an electrical transmission structure**
54 **used to support high voltage overhead power lines. The term shall not include**
55 **any utility pole;**

56 **(10) "Equipment compound", an area surrounding or near a wireless**
57 **support structure within which are located wireless facilities;**

58 **(11) "Existing structure", a wireless support structure that exists at the**
59 **time a request to place wireless facilities on a structure is filed with an**
60 **authority. The term includes any structure that is capable of supporting the**
61 **attachment of wireless facilities in compliance with applicable building codes,**
62 **National Electric Safety Codes, and recognized industry standards for structural**
63 **safety, capacity, reliability, and engineering, including, but not limited to, towers,**
64 **buildings, [and] water towers[. The term shall not include any utility pole], and**
65 **utility poles;**

66 **(12) "Micro wireless facility", a small wireless facility that is no**
67 **larger in dimension than twenty-four inches in length, fifteen inches in**
68 **width, twelve inches in height, and that has an exterior antenna, if any,**
69 **no longer than eleven inches;**

70 **(13) "Replacement", includes constructing a new wireless support**
71 **structure of equal proportions and of equal height or such other height that would**
72 **not constitute a substantial modification to an existing structure in order to**

73 support wireless facilities or to accommodate collocation and includes the
74 associated removal of the preexisting wireless facilities or wireless support
75 structure;

76 ~~[(13)]~~ **(14) "Small wireless facility", a wireless facility with an**
77 **antenna of no more than six cubic feet in volume and associated**
78 **equipment with a cumulative volume no larger than twenty-eight cubic**
79 **feet. An associated electric meter, concealment, telecom demarcation**
80 **box, grounding equipment, power transfer switch, cutoff switch,**
81 **vertical cable runs and related conduit on a pole for the connection of**
82 **power and other services may be located outside the primary**
83 **equipment enclosure and are not included in the calculation of the**
84 **equipment volume. Volume shall be a measure of the exterior**
85 **displacement, not the interior volume, of the enclosure. This term shall**
86 **include a micro wireless facility;**

87 **(15) "Substantial modification", the mounting of a proposed wireless**
88 **facility on a wireless support structure which, as applied to the structure as it**
89 **was originally constructed:**

90 (a) Increases the existing vertical height of the structure by:

91 a. More than ten percent; or

92 b. The height of one additional antenna array with separation from the
93 nearest existing antenna not to exceed twenty feet, whichever is greater; or

94 (b) Involves adding an appurtenance to the body of a wireless support
95 structure that protrudes horizontally from the edge of the wireless support
96 structure more than twenty feet or more than the width of the wireless support
97 structure at the level of the appurtenance, whichever is greater (except where
98 necessary to shelter the antenna from inclement weather or to connect the
99 antenna to the tower via cable);

100 (c) Involves the installation of more than the standard number of new
101 outdoor equipment cabinets for the technology involved, not to exceed four new
102 equipment cabinets; or

103 (d) Increases the square footage of the existing equipment compound by
104 more than one thousand two hundred fifty square feet;

105 ~~[(14)]~~ **(16) "Utility", any person, corporation, county, municipality acting**
106 **in its capacity as a utility, municipal utility board, or other entity, or department**
107 **thereof or entity related thereto, providing retail or wholesale electric, natural**
108 **gas, water, waste water, data, cable television, or telecommunications, wireless**

109 **communications service**, or internet protocol-related services;

110 [(15)] **(17) "Utility pole"**, a structure owned or operated by a utility that
111 is designed specifically for and used to carry lines, cables, [or] wires **or wireless**
112 **facilities** for telephony, **wireless communications service**, cable television,
113 or electricity, or to provide lighting, **traffic control, signage, or similar**
114 **function**;

115 [(16)] **(18) "Water tower"**, a water storage tank, or a standpipe or an
116 elevated tank situated on a support structure, originally constructed for use as
117 a reservoir or facility to store or deliver water;

118 **(19) "Wireless communications infrastructure provider"**, a person
119 **or entity that installs or constructs facilities or structures used to**
120 **provide wireless communications service**;

121 [(17)] **(20) "Wireless communications service"**, includes the wireless
122 facilities of all services licensed to use radio communications pursuant to Section
123 301 of the Communications Act of 1934, 47 U.S.C. Section 301, **and fixed or**
124 **mobile communication transmission services including, but not limited**
125 **to, data or voice transmissions provided using wireless facilities,**
126 **including both one-way and two-way communications services, and**
127 **services using licensed or unlicensed spectrum including the use of wi-**
128 **fi; provided that, using wireless facilities does not include wireline**
129 **backhaul facilities**;

130 **(21) "Wireless communications service provider"**, a provider of
131 **wireless communications service**;

132 [(18)] **(22) "Wireless facility"**, the set of equipment and network
133 components, [exclusive of the underlying wireless support structure,] including,
134 but not limited to, antennas, accessory equipment, transmitters, receivers, power
135 supplies, cabling, **small wireless facilities**, and associated equipment necessary
136 to provide wireless communications services. **The term shall not include:**

137 **(a) The underlying wireless support structure;**

138 **(b) Wireline backhaul facilities; or**

139 **(c) Coaxial or fiber-optic cable that is not immediately adjacent**
140 **to or directly associated with a particular collocation;**

141 [(19)] **(23) "Wireless support structure"**, a **freestanding** structure, such
142 as a monopole, tower, [or] **electrical transmission tower, water tower,**
143 **utility pole, building, or other existing or proposed structure** capable of
144 supporting wireless facilities[. This definition does not include utility poles.];

145 **(24) "Wireline backhaul facility", a facility used for the transport**
146 **of communication data by wire from wireless facilities to a network.**

67.5094. In order to ensure uniformity across the state of Missouri with
2 respect to the consideration of every application, an authority shall not:

3 (1) Require an applicant to submit information about, or evaluate an
4 applicant's business decisions with respect to its designed service, customer
5 demand for service, or quality of its service to or from a particular area or site;

6 (2) Evaluate an application based on the availability of other potential
7 locations for the placement of wireless support structures or wireless facilities,
8 including without limitation the option to collocate instead of construct a new
9 wireless support structure or for substantial modifications of a support structure,
10 or vice versa; provided, however, that solely with respect to an application for a
11 new wireless support structure, an authority may require an applicant to state
12 in such applicant's application that it conducted an analysis of available
13 collocation opportunities on existing wireless towers within the same search ring
14 defined by the applicant, solely for the purpose of confirming that an applicant
15 undertook such an analysis. For collocation to any certified historic structure as
16 defined in section 253.545, in addition to all other applicable time requirements,
17 there shall be a thirty-day time period before approval of an application. During
18 such time period, an authority shall hold one or more public hearings on
19 collocation to a certified historic structure;

20 (3) Dictate the type of wireless facilities, infrastructure or technology to
21 be used by the applicant, including, but not limited to, requiring an applicant to
22 construct a distributed antenna system in lieu of constructing a new wireless
23 support structure;

24 (4) Require the removal of existing wireless support structures or wireless
25 facilities, wherever located, as a condition for approval of an application, **unless**
26 **such structures or facilities owned by the applicant are abandoned and**
27 **subject to rules adopted under section 67.5101(7);**

28 (5) With respect to radio frequency emissions, impose environmental
29 testing, sampling, or monitoring requirements or other compliance measures on
30 wireless facilities that are categorically excluded under the Federal
31 Communication Commission's rules for radio frequency emissions under 47 CFR
32 1.1307(b)(1) or other applicable federal law, as the same may be amended or
33 supplemented;

34 (6) Establish or enforce regulations or procedures for RF signal strength

35 or the adequacy of service quality;

36 (7) Establish or enforce regulations or procedures for environmental safety
37 for any wireless communications facility that is inconsistent with or in excess of
38 those required by **Office of Engineering and Technology (OET)** Bulletin 65,
39 entitled Evaluating Compliance with FCC Guidelines for Human Exposure to
40 Radio Frequency Electromagnetic Fields, Edition 97-01, released August, 1997,
41 and Supplement A: Additional Information for Radio and Television Broadcast
42 Stations;

43 (8) In conformance with 47 U.S.C. Section 332(c)(7)(b)(4), reject an
44 application, in whole or in part, based on perceived or alleged environmental
45 effects of radio frequency emissions;

46 (9) Impose any restrictions with respect to objects in navigable airspace
47 that are greater than or in conflict with the restrictions imposed by the Federal
48 Aviation Administration;

49 (10) Prohibit the placement of emergency power systems that comply with
50 federal and state environmental requirements;

51 (11) Charge an application fee, consulting fee, or other fee associated with
52 the submission, review, processing, and approval of an application that is not
53 required for similar types of commercial development within the authority's
54 jurisdiction. Fees imposed by an authority for or directly by a third-party entity
55 providing review or technical consultation to the authority must be based on
56 actual, direct, and reasonable administrative costs incurred for the review,
57 processing, and approval of an application. Except when mutually agreeable to
58 the applicant and the authority, total charges and fees shall not exceed five
59 hundred dollars for a collocation application or one thousand five hundred dollars
60 for an application for a new wireless support structure or for a substantial
61 modification of a wireless support structure. Notwithstanding the foregoing, in
62 no event shall an authority or any third-party entity include within its charges
63 any travel expenses incurred in a third-party's review of an application and in no
64 event shall an applicant be required to pay or reimburse an authority for
65 consultation or other third-party fees based on a contingency or result-based
66 arrangement;

67 (12) Impose surety requirements, including bonds, escrow deposits, letters
68 of credit, or any other type of financial surety, to ensure that abandoned or
69 unused facilities can be removed unless the authority imposes similar
70 requirements on other permits for other types of commercial development or land

71 uses;

72 (13) Condition the approval of an application on the applicant's agreement
73 to provide space on or near the wireless support structure for authority or local
74 governmental services at less than the market rate for space or to provide other
75 services via the structure or facilities at less than the market rate for such
76 services;

77 (14) Limit the duration of the approval of an application, **except that an**
78 **authority may require an applicant for a small wireless facility to act**
79 **upon the approved application within eighteen months. If an authority**
80 **so requires and an application is not acted upon within said time, the**
81 **application shall be considered withdrawn by the applicant, and the**
82 **approval shall be null and void;**

83 (15) Discriminate or create a preference on the basis of the ownership,
84 including ownership by the authority, of any property, structure, or tower when
85 promulgating rules or procedures for siting wireless facilities or for evaluating
86 applications;

87 (16) Impose any requirements or obligations regarding the presentation
88 or appearance of facilities, including, but not limited to, those relating to the kind
89 or type of materials used and those relating to arranging, screening, or
90 landscaping of facilities if such regulations or obligations are unreasonable;

91 (17) Impose any requirements that an applicant purchase, subscribe to,
92 use, or employ facilities, networks, or services owned, provided, or operated by an
93 authority, in whole or in part, or by any entity in which an authority has a
94 competitive, economic, financial, governance, or other interest;

95 (18) Condition the approval of an application on, or otherwise require, the
96 applicant's agreement to indemnify or insure the authority in connection with the
97 authority's exercise of its police power-based regulations, **except that an**
98 **authority may require an applicant for a small wireless facility to**
99 **indemnify the authority in the same manner and to the same extent as**
100 **utilities using the right-of-way; or**

101 (19) Condition or require the approval of an application based on the
102 applicant's agreement to permit any wireless facilities provided or operated, in
103 whole or in part, by an authority or by any entity in which an authority has a
104 competitive, economic, financial, governance, or other interest, to be placed at or
105 collocated with the applicant's wireless support structure.

67.5101. Notwithstanding sections 67.5090 to 67.5103, the

2 following provisions shall apply to applications relating to small
3 wireless facilities:

4 (1) An authority shall not require an application, nor any
5 permits or fees, for the following work:

6 (a) Routine maintenance on previously permitted small wireless
7 facilities;

8 (b) The replacement of previously permitted small wireless
9 facilities with small wireless facilities that are the same or smaller in
10 size, weight, and height, except the replacement shall be in accordance
11 with applicable requirements under subsection 1 of section 67.5100; or

12 (c) The installation, placement, maintenance, or replacement of
13 micro wireless facilities that are suspended on cables that are strung
14 between existing utility poles in compliance with the National Electric
15 Safety Code;

16 (2) Nothing in this section shall prevent an authority from
17 requiring a permit for work in a right-of-way that will involve
18 excavation, affect traffic patterns or obstruct vehicular traffic in the
19 right-of-way, or, for work described in paragraph (b) of subdivision (1)
20 of this section that involves different equipment than that being
21 replaced, a description of such new equipment so that the authority
22 may maintain an accurate inventory of the small wireless facilities at
23 that location;

24 (3) An authority shall process an application for the collocation
25 or replacement or installation of small wireless facilities on a
26 nondiscriminatory basis, and an application may include up to twenty-
27 five separate small wireless facilities, provided that they are for the
28 same or materially same design of small wireless facility being
29 collocated on the same or materially the same type of utility pole or
30 wireless support structure. If an authority receives applications for
31 approval of more than seventy-five small wireless facilities within a
32 fourteen-day period, whether from a single or multiple applicants, the
33 authority may, upon its own request, obtain an automatic thirty-day
34 extension for any additional collocation or replacement or installation
35 application submitted during that fourteen-day period or in the
36 fourteen-day period immediately following the prior fourteen-day
37 period. An authority shall promptly communicate its request to each
38 and any affected applicant. In rendering a decision on an application

39 for multiple small wireless facilities, the authority may approve the
40 application as to certain individual small wireless facilities while
41 denying it as to others based on applicable requirements and standards
42 including those identified in subsection 1 of section 67.5100. The
43 authority's denial of any individual small wireless facility or subset of
44 small wireless facilities within an application is not a basis to deny the
45 application as a whole;

46 (4) Notwithstanding any provision of law to the contrary, an
47 authority shall not require that an existing structure have an existing
48 wireless facility before a small wireless facility or micro wireless
49 facility may be placed, attached, or installed upon such existing
50 structure;

51 (5) An authority shall authorize the collocation or replacement
52 that does not meet the standards of paragraphs (b) or (c) of subdivision
53 (1) of this section of a small wireless facility on a wireless support
54 structure not located within the public right-of-way to the same extent
55 the authority has granted access, whether by lease or other rights
56 granted, to such wireless support structures for other wireless
57 communications infrastructure providers, and may at the authority's
58 sole discretion, authorize the collocation or replacement that does not
59 meet the standards of paragraphs (b) or (c) of subdivision (1) of this
60 section even if the authority has not previously authorized such access,
61 provided required permits are obtained under applicable standards and
62 requirements including those identified under subsection 1 of section
63 67.5100. Except in single-family residential or areas zoned as historic,
64 an applicant may install a replacement or modified utility pole or
65 wireless support structure in the public right-of-way for small wireless
66 facilities as authorized by this section, and subject to no greater zoning
67 or permitting requirements than for small wireless facilities, so long as
68 the utility pole or wireless support structure meets the authority's
69 requirements under this section, including subdivision (10) of this
70 section, and does not exceed the greater of the following:

71 (a) Ten feet above the tallest existing utility pole already in the
72 public right-of-way. For purposes of this subparagraph, "existing utility
73 pole" means a utility pole already in the same public right-of-way as of
74 August 28, 2017 and which is located within five hundred feet of the
75 applicant's proposed utility pole or wireless support structure; or

76 (b) Fifty feet above ground level;

77 (6) If an application for the collocation of small wireless
78 facilities is denied, the authority shall document the basis for a denial,
79 including the specific standards on which the denial was based, and
80 send the documentation to the applicant on or before the day the
81 authority denies an application. The applicant may cure the
82 deficiencies identified by the authority and resubmit the application
83 within thirty days of the denial without paying a new application
84 fee. The authority shall approve or deny the revised application within
85 thirty days, and may not raise new deficiencies that were not identified
86 in the original denial;

87 (7) Once an application for the collocation of small wireless
88 facilities is approved, the applicant may maintain the small wireless
89 facility in the permitted location for at least ten years, which period
90 shall be extended automatically for at least three five-year periods
91 unless the applicant requests that the permit be terminated or unless
92 the applicant and the authority agree to an extension term of less than
93 ten years. During the initial and renewal periods, there shall be no
94 requirement for the applicant to reapply to collocate in an approved
95 location. Nothing herein precludes the authority from adopting
96 reasonable rules with respect to the removal of abandoned small
97 wireless facilities;

98 (8) An authority may not institute a moratorium, whether
99 directly through a written policy or indirectly through action or
100 inaction, on:

101 (a) Filing, receiving, or processing applications for the
102 collocation of small wireless facilities; or

103 (b) Issuing permits or approvals for the collocation of small
104 wireless facilities;

105 (9) Notwithstanding subdivision (8) of this section, an authority
106 may impose a temporary moratorium on applications for small wireless
107 facilities and the collocation thereof for the duration of a federal or
108 state-declared natural disaster or for no more than thirty days in the
109 event of a major and protracted staffing shortage that reduces the
110 number of personnel necessary to the receipt, review, processing, and
111 approval or denial of applications for the collocation of small wireless
112 facilities by more than fifty percent;

113 **(10) An authority may require that an application for a permit**
114 **for a small wireless facility, to replace a utility pole, or for a support**
115 **structure to accommodate such a facility, demonstrate that the small**
116 **wireless facility or the replacement pole or structure reasonably**
117 **matches the aesthetics of a utility pole or wireless support structure**
118 **with decorative elements to which it will be attached, or an authority**
119 **may subject small wireless facilities to reasonable and cost-efficient**
120 **concealment requirements;**

121 **(11) No approval for the installation, placement, maintenance, or**
122 **operation of a small wireless facility under this section shall be**
123 **construed to confer authorization for the provision of cable television**
124 **service or installation, placement, maintenance, or operation of a**
125 **wireline backhaul facility or communications facility, other than a**
126 **small wireless facility, in the right-of-way;**

127 **(12) Nothing in sections 67.5090 to 67.5103 shall be interpreted**
128 **to exempt an applicant, or any entity which acquires the rights to any**
129 **portion of a small wireless facility, which is located in right-of-ways**
130 **under the exclusive control of an authority from the exclusive financial**
131 **responsibility for the movement of the small wireless facility,**
132 **equipment compound, wireless facility, wireless support structure, or**
133 **any associated equipment being moved as a result of a public project**
134 **undertaken by an authority. If the project necessitating movement of**
135 **the small wireless facility, equipment compound, wireless facility,**
136 **wireless support structure, or any associated equipment is a private**
137 **commercial project, the entity undertaking the private commercial**
138 **project must make an advance payment for the movement of the subject**
139 **facilities before the applicant, or any entity which acquires the rights**
140 **to any portion of a small wireless facility which is located in the right-**
141 **of-way under the exclusive control of an authority is obligated to move**
142 **the subject facilities; and**

143 **(13) A new wireless support structure shall not be placed in the**
144 **public right-of-way unless such placement is approved by the process**
145 **set forth in section 67.5096. A new utility pole that is to be placed in**
146 **the public right-of-way for the purpose of supporting small wireless**
147 **facilities and is not replacing an existing utility pole as described in**
148 **subdivision (5) shall be subject to the same municipal approval process**
149 **as other utility poles. For the purpose of this subdivision, a structure**

150 shall be considered a wireless support structure, and not a utility pole,
151 if it exceeds the greater of:

152 (a) Ten feet above the tallest existing utility pole already in the
153 public right-of-way as of August 28, 2017, located within five hundred
154 feet of the applicant's proposed structure; or

155 (b) Fifty feet above ground level.

67.5102. In accordance with the policies of this state to further the
2 deployment of wireless communications infrastructure:

3 (1) [An authority] **Except as provided under subdivision (9) of**
4 **section 67.5101**, an authority may not institute any moratorium on the
5 permitting, construction, or issuance of approval of new wireless support
6 structures, substantial modifications of wireless support structures, or
7 collocations if such moratorium exceeds six months in length and if the legislative
8 act establishing it fails to state reasonable grounds and good cause for such
9 moratorium. No such moratorium shall affect an already pending application;

10 (2) To encourage applicants to request construction of new wireless
11 support structures on public lands and to increase local revenues:

12 (a) An authority may not charge a wireless service provider or wireless
13 infrastructure provider any rental, license, or other fee to locate a wireless facility
14 or wireless support structure on an authority's property in excess of the current
15 market rates for rental or use of similarly situated property. If the applicant and
16 the authority do not agree on the applicable market rate for any such public land
17 and cannot agree on a process by which to derive the applicable market rate for
18 any such public land, then the market rate will be determined by a state-certified
19 general real estate appraiser licensed under chapter 339 mutually agreed upon
20 by the parties at the applicant's cost. The appraisal process shall be concluded
21 within ninety calendar days from the date the applicant first tenders its proposed
22 lease rate to the authority. In the event either party is dissatisfied with the
23 value determined by the appraiser, such party may bring an action for review in
24 any court of competent jurisdiction. The court shall rule on any such petition for
25 review in an expedited manner. Nothing in this paragraph shall bar an applicant
26 and an authority from agreeing to reasonable, periodic reviews and adjustments
27 of current market rates during the term of a lease or contract to use an
28 authority's property; [and]

29 (b) An authority may not offer a lease or contract to use public lands to
30 locate a wireless support structure **or wireless facility** on an authority's

31 property that is less than fifteen years in duration unless the applicant agrees to
32 accept a lease or contract of less than fifteen years in duration;

33 **(c) An authority may not charge a wireless communications**
34 **service provider or wireless communications infrastructure provider**
35 **any fee, tax other than a tax authorized by paragraph (d) of subdivision**
36 **(2) of this section, or other charge, or require any other form of**
37 **payment or compensation, to locate a wireless facility or wireless**
38 **support structure on privately-owned property, or on a wireless**
39 **support structure not owned by the authority; and**

40 **(d) No authority nor any other political subdivision shall demand**
41 **any fees, rentals, licenses, charges, payments, or assessments from any**
42 **applicant, wireless communications service provider, or wireless**
43 **communications infrastructure provider for, or in any way relating to**
44 **or arising from, the construction, deployment, installation, mounting,**
45 **modification, operation, use, replacement, maintenance, or repair of**
46 **wireless facilities or wireless support structures, except for the**
47 **following:**

48 **a. As otherwise expressly provided in sections 67.5090 to 67.5104;**
49 **b. Right-of-way permit fees established under 67.1840 for the**
50 **recovery of actual, substantiated right-of-way management costs; and**
51 **c. Antenna fees authorized by section 67.1846, except that such**
52 **antenna fee shall not be imposed on small wireless facilities.**

53 **Right-of-way permit fees imposed on applicants, wireless**
54 **communications service providers, and wireless communications**
55 **infrastructure providers shall be competitively neutral with regard to**
56 **all other users of the right-of-way, shall not be in the form of a**
57 **franchise fee or tax, or other fee based on non-cost related factors such**
58 **as revenue, sales, profits, lines, subscriptions or customer counts, and**
59 **shall not result in double recovery where existing charges already**
60 **recover the direct and actual costs of managing the right-of-way. This**
61 **paragraph precludes the imposition of business license taxes, business**
62 **license fees, or gross receipts taxes on wireless communications service**
63 **providers and wireless communications infrastructure providers,**
64 **whether based on gross receipts or other factors, except that this**
65 **paragraph allows the imposition of such taxes and fees that are also**
66 **imposed on wireline telecommunications businesses operating within**
67 **the jurisdiction of the authority, or as mutually agreed to by the**

68 **authority and the wireless communications service provider or the**
69 **wireless communications infrastructure provider.**

70 (3) Nothing in subdivision (2) of this section is intended to limit an
71 authority's lawful exercise of zoning, land use, or planning and permitting
72 authority with respect to applications for new wireless support structures on an
73 authority's property under subsection 1 of section 67.5096.

74 (4) **Except as provided in sections 67.5090 to 67.5104, or as**
75 **required by federal law, no authority or other political subdivision**
76 **shall adopt or enforce any regulations or impose any additional fees on**
77 **the placement or operation of communications facilities in the right-of-**
78 **way where such facilities are already authorized by franchise or**
79 **authorization other than that granted in sections 67.5090 to 67.5104.**

80 (5) **No authority or other political subdivision shall regulate**
81 **wireless communications services or impose or collect fees on wireless**
82 **communications services, other than those addressed in paragraph (d)**
83 **of subdivision (2) of this section, unless expressly authorized by state**
84 **or federal statute.**

67.5104. 1. As used in this section, "pole attachment" means an
2 attachment by an attaching entity, including a video service provider, a
3 telecommunications provider, **a wireless communications service provider,**
4 **as defined in section 67.5092, a wireless communications infrastructure**
5 **provider, as defined in section 67.5092,** or other communications-related
6 service provider to a pole owned or controlled by a municipal utility or
7 municipality[, but not a wireless antenna attachment or an attachment by a
8 wireless communications provider to a pole]. As used in this section, "pole"
9 means a utility pole which is owned or controlled by a municipal utility or
10 municipality[, but shall not include poles that are not associated with the
11 transmission or distribution of electric power, communications, broadband, or
12 video services] **that is designed for or used to carry lines, cables, wires,**
13 **wireless facilities for telephony, wireless communications services as**
14 **defined in section 67.5092, electricity, or to provide lighting, traffic**
15 **control, signage, or other similar function.** A municipal utility or
16 municipality may only deny an attaching entity access to the utility's poles on a
17 nondiscriminatory basis **with respect to particular poles or support**
18 **structures** if there is insufficient capacity or for reasons of safety and reliability,
19 **or generally applicable engineering standards or, for application under**

20 subdivision (10) of section 67.5101, for reasonably objective and
21 documented aesthetic considerations under subdivision (1) of section
22 67.5101, and if the attaching entity will not resolve the issue at its own
23 expense. In determining whether sufficient capacity exists to
24 accommodate the attachment of a new small wireless facility as defined
25 in section 67.5092, a municipality or municipal utility may grant access
26 subject to a reservation to reclaim such space, when and if needed to
27 meet the pole owner's core utility purpose that was projected at the
28 time of the application pursuant to a bona fide development plan. If a
29 municipal utility or municipality does not find any capacity, safety, or reliability
30 issues, such municipal utility or municipality shall issue the attaching entity a
31 permit to attach to the municipal utility's or municipality's poles. Nothing in this
32 section shall be construed to prohibit a municipal utility or municipality from
33 requiring an attaching entity to enter into a pole attachment agreement
34 consistent with this section; **except that, wireless communications**
35 **infrastructure providers or wireless communications service providers**
36 **may collocate small wireless facilities on municipal utility or**
37 **municipally owned poles located within public roads or right-of-ways**
38 **without being required to apply for, or enter into, any individual**
39 **license or franchise with the municipal utility, municipality, or other**
40 **entity, but subject to nondiscriminatory, competitively neutral, and**
41 **commercially reasonable terms and conditions as may be set forth in**
42 **a pole attachment agreement with the municipal utility or municipality,**
43 **which terms and conditions shall comply with this section and federal**
44 **pole attachment requirements under 47 U.S.C. Section 224 and**
45 **corresponding regulations in effect as of January 1, 2017. Within the**
46 **later of six months after August 28, 2017, or three months after**
47 **receiving a request by a wireless communications service provider or**
48 **wireless communications infrastructure provider, each municipal**
49 **utility and municipality shall, acting in good faith, prepare and make**
50 **available a standard wireless pole attachment agreement that complies**
51 **with the requirements of sections 67.5092 to 67.5104. A standard**
52 **wireless pole attachment agreement shall be in a form that is**
53 **substantially complete so that a wireless communications service**
54 **provider or wireless communications infrastructure provider, acting in**
55 **good faith, may accept it with little substantive negotiation.**
56 **Notwithstanding any provision of law to the contrary, nothing shall**

57 **preclude the contractual parties to a standard pole attachment**
58 **agreement, if mutually agreeable, from negotiating terms beyond those**
59 **contemplated by the standard pole attachment agreement. All pole**
60 **attachment agreements with wireless communications service providers**
61 **and wireless communications infrastructure providers shall be**
62 **considered a public record as defined under chapter 610.**

63 2. **(1)** Notwithstanding sections 67.1830 to 67.1846, any pole attachment
64 fees, terms, and conditions, including those related to the granting or denial of
65 access, demanded by a municipal utility pole owner or controlling authority of a
66 municipality shall be nondiscriminatory, just, and reasonable and shall not be
67 subject to any required franchise authority or government entity permitting,
68 except as provided in this section. A pole attachment rental fee shall be
69 calculated on an annual, per-pole basis. Such rental fee shall be considered
70 nondiscriminatory, just, and reasonable if it is agreed upon by the parties or, in
71 the absence of such an agreement, based on cost but in no such case shall such
72 fee so calculated be greater than the fee which would apply if it were calculated
73 in accordance with the cable service **pole attachment** rate formula referenced
74 in 47 U.S.C. [Sec.] **Section** 224(d) as applied by the Federal Communications
75 Commission. In addition, a municipal pole owner may be authorized to exceed
76 the rate of return cost components of the Federal Communications Commission
77 formula referenced in this section if necessary to comply with Article X of the
78 Missouri Constitution. In the event of a dispute between the parties, either party
79 may bring an action for review in any court of competent jurisdiction. The court
80 shall rule on any such petition for review in an expedited manner by moving the
81 petition to the head of the docket consistent with [subsection 2 of] this
82 section. Nothing shall deny any party the right to a hearing before the court.

83 **(2) Make-ready work shall be addressed as follows, unless the**
84 **parties agree to different terms in a pole attachment agreement:**

85 **(a) For municipal utility or municipality owned poles that**
86 **support aerial cables used for video, communications, or electric**
87 **service, the parties shall comply with the process for make-ready work**
88 **under 47 U.S.C. Section 224 and implementing regulations. The good**
89 **faith estimate of the entity owning or controlling the pole for any**
90 **make-ready work necessary to enable the pole to support the requested**
91 **collocation shall include pole replacement, if necessary;**

92 **(b) For municipal utility or municipality owned poles that do not**

93 support aerial cables used for video, communications, or electric
94 service, the municipal utility or municipality shall provide a good faith
95 estimate for any make-ready work necessary to enable the pole to
96 support the requested collocation, including pole replacement, if
97 necessary, within sixty days after receipt of a complete
98 application. Make-ready work, including any pole replacement, shall
99 be completed within sixty days of written acceptance of the good faith
100 estimate and advance payment, if required, by the applicant; and

101 (c) Make-ready work shall not require more work than required
102 to meet applicable codes or industry standards. Charges for
103 make-ready work, including any pole replacement, shall not exceed
104 actual costs or the amount charged to other communications service
105 providers for similar work and shall not include third-party fees,
106 charges, or expenses, except for amounts charged by licensed
107 contractors actually performing the make-ready work.

108 3. Small wireless facility pole attachments completed on or after
109 August 28, 2017, shall not interfere with or impair the operation of
110 existing utility facilities or preexisting third-party attachments.

111 [3.] 4. Where no pole attachment agreement exists between an attaching
112 entity and the municipal utility pole owner or controlling authority of a
113 municipality, and a dispute between a municipal utility pole owner or controlling
114 authority of a municipality and an attaching entity exclusively concerns the
115 per-pole fee or any requirement or issue not directly related to pole attachments
116 consistent with this section or both, then the attaching entity may proceed with
117 its attachments during the pendency of the dispute under the agreed-upon terms
118 and conditions at a rental rate of no more than as set forth in subsection 2 of this
119 section. The attaching entity shall comply with applicable and reasonable
120 engineering, safety, and reliability standards and shall hold the municipal pole
121 owner or controlling authority of the municipality harmless for any liabilities or
122 damages incurred that are caused by the attaching entity.

123 [4.] 5. The provisions of this section shall not supersede existing pole
124 attachment agreements established prior to August 28, [2014] 2017.

125 [5.] 6. Nothing in this section shall be construed as conferring any
126 jurisdiction or authority to the public service commission or any state agency to
127 regulate either the fees, terms, or conditions for pole attachments, or for any state
128 agency to assert any jurisdiction over attachments to poles regulated by 47 U.S.C.

129 [Sec.] **Section 224.**

130 [6.] **7.** A municipal utility or municipality may, after reasonable written
131 notice and an opportunity to cure, as provided in the applicable pole attachment
132 agreement between a municipal utility or municipality and an attaching entity,
133 revoke a pole attachment permit granted to an attaching entity and require
134 removal of the attachment with or without fee refund for breach of the pole
135 attachment agreement or permit until the breach is cured, but only in the event
136 of a substantial breach of material terms and conditions of the pole attachment
137 agreement or permit. A substantial breach by an attaching entity shall be limited
138 to:

139 (1) A material violation of a material provision of the applicable pole
140 attachment agreement or permit;

141 (2) An evasion or attempt to evade any material provision of the
142 applicable pole attachment agreement or permit;

143 (3) A material misrepresentation of fact in the applicable pole attachment
144 agreement or permit application;

145 (4) A failure to complete work by the date and in accordance with the
146 terms specified in the applicable pole attachment agreement or permit, unless an
147 extension is obtained or unless the failure to complete the work is due to reasons
148 beyond the attaching entity's control; or

149 (5) A failure to correct, within the time and in accordance with the terms
150 specified by the municipal utility or municipality in the applicable pole
151 attachment agreement or permit, work by the attaching entity that does not
152 conform to applicable national safety codes, industry construction standards, or
153 local safety codes that are not more stringent than national safety codes, upon
154 inspection and notification by the municipal utility or municipality of the faulty
155 condition. If the time for correction is not specified in the applicable pole
156 attachment agreement or permit, the time for correction shall be reasonable
157 under the particular circumstances, and in no event less than thirty days.

158 [7.] **8.** Unless otherwise provided for in an applicable pole attachment
159 agreement, in the event of an imminent threat to public health, life, or safety, a
160 municipal utility or municipality shall, upon notice to the attaching entity,
161 request the attaching entity rearrange, relocate, or remove a pole attachment
162 from a pole or absent action from the attaching entity, have the authority to
163 rearrange, relocate, or remove a pole attachment consistent with industry
164 practices. The attaching entity shall be notified as soon as practicable upon the

165 cessation of the threat to public health, life, or safety, or upon restoration of the
166 attachment by the municipal utility or municipality.

167 **9. Nothing in this section grants any wireless communications**
168 **service provider or wireless communications infrastructure provider**
169 **the power of eminent domain.**

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